IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Regular Second Appeal No.55 of 1997
Date of decision: 09.10.2007

State of H.P. **….Appellant.**

Versus

Jagat Ram **….Respondent**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Appellant: **Mr.Rajan Dewan, Additional Advocate General.**

For the Respondent: **Mr.K.D. Sood, Advocate.**

Dev Darshan Sud,J.

The State of Himachal Pradesh has filed this appeal against the concurrent findings of both the Courts below decreeing the suit of the respondent-plaintiff for declaration to the effect that they alongwith defendants No.2 to 13 are owners in possession of the suit land continuously since the year 1910-11 till date.

The facts are being noticed in brief as the subsequent amendment in the law would render this appeal as infructuous.

Briefly put, the case of the plaintiff is that they had been recorded in possession alongwith

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement?***

defendants No.2 to 13 of the suit land since the year 1910 which facts have been incorporated in the Jamabandi continuously.

The State contested the suit on the ground that the Civil Court has no jurisdiction and that the suit land which is described as `***Shamlat Tika Makbuja Malkan'*** is assessed to land revenue and has rightly vested in the State of Himachal Pradesh free from all encumbrances under H.P. Village Common Lands (Vesting and Utilisation) Act, 1974 (hereinafter referred to as the "Act"). The State has pleaded that the land has been placed in the allot-able pool in accordance with the provisions of the Act.

The learned trial Court framed eight issues and decided issues No.1, 2, 4 and 7 together. They are; (1) as to whether the plaintiff and defendants are owners in possession of the suit land, (2) whether the suit land could not have vested in the State of H.P., (4) whether the plaintiffs had no enforceable rights and (7) whether the plaintiff was entitled to decree of injunction, as prayed for.

While deciding these issues, the learned Court held the possession of the plaintiffs and defendants since 1910-11 in the suit land including that of their predecessors-in-interest who were recorded in joint possession of the suit land. These findings have been affirmed by both the Courts. The learned trial Court, considered the provisions of

clauses I and II of sub-section (3) of Section 4 of the Punjab Village Common Land (Regulation) Act, namely:-

> *4(I) Notwithstanding any thing to the contrary contained in any other law for the time being in force or in any agreement, instrument, custom or usage or any decree or order of any court or other authority, all rights, title and interest whatever in the land :-*
>
> *(a) xxx xxx xxx xxx xxx xxx*
>
> *(b) xxx xxx xxx xxx xxx xxx*
>
> *(2) Any land which is vested in Panchayat under the Shamilat law shall be deemed to have been vested in the Panchayat under this Act.*
>
> *(3) Nothing contained in clause (a) of sub-section (I) and in sub-section (2) shall affect or shall be deemed ever to have affected the_*
>
> *(i) xxx xxx xxx xxx xxx xxx*
>
> *(ii) rights of persons in cultivating possession of Shamilat deh for more than twelve years (immediately preceding the commencement of the Act) without payment of rent or by payment or charges not exceeding the land revenue and cesses payable thereon".*

and held that the plaintiffs were in possession of the land before the appointed date in the Punjab Act which was 26.1.1950. In the circumstances, the learned trial Court held that the suit land never vested in the Government of Himachal Pradesh. On the question of jurisdiction, the learned Court concluded that the objection taken by the respondent-defendant (State of Himachal Pradesh) that the jurisdiction of the Civil Court was barred, as determination of vesting had to be made by the Revenue Authorities, it was held that the question of determination of title was involved in the suit and in these circumstances, the Court had jurisdiction to try the suit.

An appeal preferred to before the learned District Judge, was dismissed where the learned Court held that the plaintiffs were the owners in possession of the land and affirmed the findings on fact on all issues, after a careful consideration of the entire oral and documentary evidence on record. The objection regarding jurisdiction taken by the State was also rejected by the learned Appellate Court holding that question of title is the exclusive domain of Civil Courts. Before the appeal is taken up for determination on the points of law sought to be urged, it would be worth noticing that the Act has now been amended and even land which has vested in the State, has been ordered to be returned to those who were in cultivating possession of the land. By an amendment

made vide Act No.20 of 2001 enforced on 27.9.2001, in Section 3(b), the following has been added:-

> *"3. In section 3 of the principal Act,-*
>
> *(a) … … … … … … … … … … …*
>
> *(b) in sub-section (2), after clause (c), the following shall be added namely:-*
>
> *"(d) land recorded as "shamlat tika Hasab Rasad Malguzari" or by any such other name in the ownership column of Jambandi and assessed to land revenue and has been continuously recorded in cultivating possession of the Co-sharers so recorded before 26th January, 1950 to the extent of their shares therein:*
>
> *Provided that the provisions of this clause shall not be applicable to such lands which have already been put to use by the Government."*

Section 3(2) deals with land excluded from vestment contemplated by Section 3(1).

If the matter is considered in the light of this amendment, it would be apparent and evident that the plaintiffs and the defendants No.2 to 13, who have been recorded as owners in possession un-interruptedly

since 1910-11 cannot be dispossessed from the suit land. It is not disputed before me that the government has not put the land to any other use as permitted by the Act.

On the question of law rose, namely:

(1) Whether the civil court has no jurisdiction to entertain and try the suit in view of the bar created by Section 10 of the HP Village Common Land (Vesting & Utilization) Act, 1974 and u/s 171 of HP Land Revenue Act?

(2) Whether the land in dispute has rightly been vested in the Gram Panchayat and thereafter in the State of HP under the Punjab Village Common Lands (Regulation) Act, 1961 and HP Village Common Lands (Vesting & Utilization), Act, 1974 free from all encumbrances?

(3) Whether the mis-reading of documentary and oral evidence itself amounts to substantial question of law?

The first question of law is decided against the State by holding that the provisions of Act do not provide for determination of the title of the parties or the legality of the statutory provisions. It is the Civil Court alone which can adjudicate on such matters and this power cannot be abdicated in favour

of the Revenue Authorities merely on the ground that an action for vestment having been taken, its correctness cannot be determined by a Civil Court. The question is answered against the appellant.

On the second question, the very provisions of the Punjab Village Common Lands (Regulation) Act, 1961 itself provide that the land would not vest in the Panchayat or State. On the appointed day i.e. 26.1.1950, the plaintiff and the respondents were in possession of the land. There is nothing on the record to dislodge this concurrent finding of the two Courts below based on a composite reading of the revenue record. Moreover, the amendment made in the Act itself now provides that even if such vestment has taken place, the land would return to the land owners. It is admitted that this land has not been allotted to any other person(s). In the facts and circumstances, this question is answered against the State.

On the third question, all that need to be said is that under the guise of misreading of the pleadings and evidence, the defendants cannot be given the liberty of having the evidence reassessed again. Both the Courts have considered the evidence in detail and I do not find any perversity in the appreciation of evidence.

There is nothing on the record to show that the evidence, oral and documentary, has not been considered correctly by the two Courts below. There

is, thus, no merit in the appeal, which is accordingly dismissed. There shall be no order as to costs.

October 9, 2007 **(Dev Darshan Sud)**
(aks) **Judge.**